

**Massachusetts Workers' Compensation
Advisory Council Minutes**

April 8, 2004

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Thomas M. Jones; Vice-Chairman Paul Byrne. CM: Robert Banks; Ines Leonardo; Mickey Long; Alan S. Pierce; Carol Falcone; Joan Lenihan, (Department of Labor and Workforce Development).

Also Present: DIA: Deputy Commissioner John Chapman; Senior Judge Daniel O'Shea; Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; Bill Taupier, Deputy Director of Administration & EDP.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan; Ann Helgran.

Absent: CM: Edmund C. Corcoran, Jr.; Jeanne-Marie Boylan; Bruce Cochrane; Stephen Sampson; Rich Weitzel (Department of Business and Technology).

Agenda:

DIA Update

Action Items

- Minutes - January 14, 2004
- Minutes - February 11, 2004

Budget Subcommittee Update - Tom Jones

Executive Director Update

Miscellaneous

Executive Session

State Audit Subcommittee Update - Carol Falcone

Chairman's Welcome

Chairman Jones opened today's meeting by introducing the newly appointed Council Member and Vice-Chairman, Paul Byrne (MBTA Police Association) and Council Member Mickey Long (AFL-CIO).

Chairman Jones thanked members of the Advisory Council staff for their assistance in organizing the judicial appointment meetings. He informed Council Members that the recommendations had been submitted to the Governor.

DIA UPDATE

Senior Judge Daniel O'Shea updated Advisory Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: (April) 1,054, (March) 857; Hearing Queue: (April) 1,844, (March) 1,922; Reviewing Board Inventory: (April) 109, (March) 114; Impartial Exams: (April) 3,317 - 98 waivers, (March) 2,901 - 78 waivers.

The Senior Judge stated that there are 258 impartial physicians contracted with the DIA.

Although this number reflects a slight increase, some physicians on the list are beginning to retire. The Senior Judge explained that once an impartial physician retires, they are no longer eligible to be on the roster the following year. The Senior Judge stated that he had met with the Health Care Services Board to discuss contract issues and seek alternatives to these concerns. He noted that the hardest hit areas are Metro-West and East. The Senior Judge has attempted to recruit new physicians from UMass Medical Center, but has had a minimal response.

The Senior Judge anticipates a dramatic increase in conferences since three sitting judges have not been reappointed and had to be taken out of the queue. He expects the increase will correct itself with the appointment of new judges. The methodology employed during the reappointment cycle is that a large portion of conferences will be assigned to the judges, enabling them to build up an inventory of cases.

The cases in the hearing queue have decreased. The Senior Judge indicated that he does not expect this trend to continue, especially since three judges have been pulled off-line.

He explained that any cases with decisions not written by the three judges, will need to be placed back into the queue. There may be a slight increase in the amount of cases to be heard until the new judges are on board and the cases can be dispersed.

The Senior Judge noted that he will ask departing Judges to attempt to complete as many cases as feasible that are contained within the "Decisions Outstanding Over 6 Months" report. For the three judges who are not being reappointed, an accurate list of the number of cases that will need to be placed back into the hearing queue will not be available for at least a couple more weeks.

Stop Work Orders/Caseload Statistics

Mr. Bill Taupier updated Council Members on the Stop Work Order and Caseload Statistics (see attached report). Stop Work Orders issued for March: 32, February: 15 (the DIA had a decrease during the month of February due to a

significant amount of training and a higher concentration of actual detective work). Total Stop Work Order compliance investigations completed during March: 992; Fines Collected: March: \$33,916; February: \$30,392.

The administration has reported that the Office of Investigations continues to improve the Stop Work Order (SWO) and fine collection process. It was explained that a greater emphasis is being placed on the investigation process. As a result, the enforcement rate of SWOs has improved by over 50%. Mr. Taupier stated that the total fines collected in Fiscal Year 2004 is \$273,783. He noted that the agency has employed a new aggressive collection process, resulting in the collection of more fines.

Council Member Falcone requested that the agency provide the Council with the outstanding amount owed in stop work order fines. Mr. Tynan explained that the agency was reconciling their Stop Work Order receivables and believed they are very close to achieving this goal. He mentioned that Mr. Morris has been working on this project almost full-time for the past three months, along with a temporary employee, who has a receivable and collections background. Mr. Tynan believes he will be able to report a number back to the Council next month. Mr. Tynan stated that there was positive news in that the DIA is not generating a good deal of receivables. Mr. Morris added that the receivable balance is close to zero.

The administration noted that the DIA is in the process of updating their accounts receivable system, enabling them to provide accurate reporting to the Council. Currently, the DIA does not have the ability to accrue fines automatically. It was noted that this is one of the reasons the MMARS and BARS system is being overhauled. It was explained that the receivable system is old and does not capture and update information automatically.

The DIA is aggressively working to make changes to their collection process. They continue to work with a collection agency, but have discontinued working with two of the attorneys due to dissatisfaction with their results. Currently, there are twelve full-time investigators on staff at the DIA. There are three or four attorneys actively pursuing collections and the agency has intentions of hiring one more experienced collection attorney to be in charge of this whole effort.

Deputy Commissioner John Chapman expanded upon this subject by sharing with the Council that the DIA has identified an attorney that has a great deal of experience in working with collections. The Deputy Commissioner noted that by hiring this attorney, the DIA will not be utilizing any outside law firms to perform these duties.

The Deputy Commissioner explained that the Office of Investigations is actively pursuing tips before issuing stop work orders. In the past, investigators had issued stop work orders without any preliminary research. He noted that the Investigations Unit has also instituted new programs to enhance collections. One such program allows businesses to pay their fines using credit card payment.

Council Member Robert Banks stated his concern regarding the true amount of money owed the agency. Mr. Banks expressed frustration that he believes the Council has been misled by the DIA in previous years. Council Member Carol Falcone observed that the Council is finally beginning to get answers after repeatedly asking the same questions.

Mr. Tynan indicated that he will provide a response at next month's meeting. Mr. Tynan added that the new administration is working hard at getting everything under control. He noted that things may not have been under control when the last audit report was released, but he hopes the Advisory Council will be pleased to see that the new administration is making changes to address past concerns.

Mr. Tynan stated that they are working with the Department of Labor and Workforce Development to provide a publicity campaign on the requirement that all employers must have adequate workers' compensation insurance.

Attorney Alan Pierce stated that in 1992, there was a public relations initiative which focused on employee fraud. He noted that injured workers who entered the DIA waiting room were offended by posters of people in handcuffs who had committed employee fraud. Mr. Pierce does not want to see this type of ad campaign repeated, especially when the financial impact is much greater with employer fraud than employee fraud.

Deputy Commissioner Chapman explained that this publicity campaign will focus on educating employers. The agency is attempting to begin this campaign in the spring, in an effort to reach seasonal businesses, the place where most injuries occur (landscapers, roofers, building contractors). The Deputy Commissioner explained that the DIA has spoken to three consulting firms at this point.

Caseload Statistics (continued)

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for March 2004: 1,673. Total number of cases filed for March 2003: 1,362. First Report filings for March 2004: 3,541. Total FY 2004 (to date): 28,186. Total First Reports filed on-line using the DIA's Information Portal on the Internet: 322. Total First Reports filed FY 2003: 36,641. Total FY 2004 (to date) cases filed: 12,358. Uninsured claims (§65) filed for fiscal year 2004: 135. Uninsured claims paid by the Trust Fund for fiscal year 2004: \$2,921,657. Total number of Section 65 Claims filed for fiscal year 2003: 233. Total number of uninsured claims paid by Trust Fund for fiscal year 2003: \$3.78 million.

Number of §37/§37A petitions filed in fiscal year 2004: 276. Number of §37/§37A petitions paid in fiscal year 2004: 426. The amount paid on these claims in fiscal year 2004: \$17,011,187. Number of §37/§37A petitions filed in fiscal year 2003 (to date): 284. Number of §37/§37A petitions paid in fiscal year 2003 (to date): 257. The amount paid on these claims in fiscal year 2003 (to date): \$19.8 million.

The subject of Section 37/37A claims was raised. It was suggested that the Executive Director contact a representative from the insurance industry to address the Council on this issue at a future meeting. The Council's main concern focused on the insurance company's ability to file a claim for a second injury and then ensure that the employer is reimbursed. The Council is interested in the legal implications of the statute surrounding this issue, as well as the ramifications involved if the statute is not followed and employers are not fully reimbursed. The assessment rate is affected by these monies and concise accounting practices are paramount to proper assessments.

Budget/Personnel Issues

First Deputy Director of Administration, Richard Morris, updated the Council on Budget/Personnel issues. The total number of positions filled by full-time employees at the DIA (including the WCTF) as of March 2004: 284 (255 DIA

employees, 29 WCTF employees). The DIA has no contract employees at this time. Five temporary employees are being utilized within the DIA as of this report. (One temporary in claims, one temporary doing stop work order reconciliations, and several people in the Conciliation Unit). A conciliator for the Springfield office has been hired. Mr. Tynan informed the Council that an initial request within the DIA Main

Appropriation Account #7002-0500 was made to DLWD for an intersubsidiary transfer. The purpose of the transfer would be to fund necessary programs and purchases, such as equipment, administrative supplies and an advertisement campaign.

Chairman Jones gave a brief overview of the DIA funding process to new members of the Council. The Chairman explained that when excess money from the General Fund is not used by the end of the fiscal year, it is returned to a special reserve account that cannot be utilized in future budgets. He stated that the Council has been able to release portions of this money in the past for specific projects by inserting language into the General Appropriations Act.

Discussion commenced on whether the Advisory Council needs legislative approval to access the Special Fund. The Deputy Commissioner encouraged the Council to further research this matter.

Another budget issue discussed was the need for increased security. Chairman Jones stated that many judicial candidates who interviewed had mentioned the lack of security at the DIA. Mr. Tynan informed the Council that a committee has selected a security vendor from an RFP to provide the DIA with recommendations.

Ms. Joan Lenihan, representing the Department of Labor & Workforce Development, stated that Director Jane Edmonds had asked her to attend today's meeting to gather both information and feedback regarding the proposed inter-subsidiary transfer of funds. Ms. Lenihan shared Director Edmonds' suggestion that the DIA begin with a pilot program with respect to the proposed ad campaign.

Mr. Taupier stated that the DIA has signed a new lease and will relocate their Worcester regional office. They are currently paying \$14.00 per sq. ft. After the move, the DIA will pay \$10.00 per sq. ft. Mr. Taupier explained that the judicial offices will be located directly behind each courtroom, allowing for easy access in case of an emergency.

Chairman Jones thanked the members of the Department for their update.

Action Items

Chairman Jones asked for a motion to accept the minutes for the Advisory Council meetings held on January 14, 2004 and February 11, 2004.

MMS - passed.

Budget Subcommittee Update

Chairman Jones provided Council Members with an overview of FY'05 Budget issues discussed at a subcommittee meeting held on February 18, 2004. Those in attendance at the subcommittee meeting were: Tom Jones, Inez Leonardo,

Carol Falcone, Jack Tynan, KrisAnn O'Herron, Andrew Burton and Evelyn Flanagan. The Fiscal Year 2005 Budget Subcommittee Update was distributed to those present (attached to minutes).

Chairman Jones stated that the Governor had recommended in his budget (House 1) that the DIA line-item receive: \$19,422,377. The cost-drivers for FY'05 are leases, employee compensation; technology maintenance, and miscellaneous expenses.

Chairman Jones addressed the subcommittee's concerns and recommendations. He stated that the subcommittee was concerned that an Inter-Departmental Service Agreement (ISA) had released \$150,000 from the DIA's Special Fund's employee payroll account to the Department of Labor & Workforce Development. The primary concern regarding this transfer was that the DIA had not notified the Advisory Council at the time the ISA took place.

Council Members agreed to forward a budget letter of support to include the importance of increased funding for DLWD. As the parent agency to the DIA, adequate funding is paramount to ensure efficient and effective services are provided to injured workers.

Chairman Jones continued to outline other areas of concern, including: overtime expenses, safety grants, postage and Outside Section #397. Chairman Jones asked for a motion to endorse the Governor's FY'05 Budget Recommendation for the DIA.

A motion was made to endorse the Governor's FY'05 Budget Recommendation of \$19,422,377 to fund the DIA's line-item. Included in the motion was that language be placed in a letter stating that "not less than \$800,000" be expended for the Safety Grant Program and that the Council is supportive of Outside Section #397. The motion also stated that DLWD should receive adequate funding to ensure that injured workers in the Commonwealth receive the highest quality of services possible.

MMS - passed.

Chairman Jones directed the Executive Director to draft an endorsement letter to the Legislature and share with Council Members for their approval.

Executive Director Update

Executive Director, Andrew Burton, updated Council Members. On March 26th he met with Jamie Testler from the Governor's Legal Office to hand deliver the Council's judicial recommendations. The Executive Director stated that Mr. Testler expressed his appreciation to the Council for such quick action and assistance in the judicial process.

Mr. Burton noted that a brochure published by the Office of Safety was enclosed in Council's packets. The brochures provided an explanation of the Safety Grant Program and the application process. The Executive Director explained that these posters and pamphlets will be displayed in local Chambers of Commerce, Career Centers, and Public Buildings.

Mr. Burton informed Council Members that Attorney Donald C. Hillman will be speaking during May's Advisory Council meeting to discuss a study he authored on competitive pricing. The Executive Director stated that he had been asked by

Representative Michael Rodrigues to serve on a Task Force which specifically examines loss costs legislation. Mr. Burton stated that the Task Force will be begin in September.

Miscellaneous

Chairman Jones announced that Council Member Alan Pierce, after serving nine years on the Council, will be resigning after the June meeting. Council Members agreed to organize a luncheon to show their appreciation for Mr. Pierce.

Chairman Jones adjourned today's regular meeting at 11:30 a.m. to adjourn into Executive Session.

The next regular meeting of the Advisory Council is scheduled for May 12, 2004 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.